



Electronic Money Association

Crescent House

5 The Crescent

Surbiton, Surrey

KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

www.e-ma.org

Laura Mountford
Deputy Director
Fintech and Payments
HM Treasury
Unit 1 Horse Guards Road
SW1A 2HQ

14 April 2024

Dear Laura

Re: EMA technical comments on [Draft Statutory Instrument The Payment Services \(Contract Terminations Amendment\) Regulations 2024](#).

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments.

Yours sincerely,

A handwritten signature in black ink, reading 'Thaer Sabri', with a long horizontal flourish extending to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response

No opt out: Regulation 2(4) Draft CT Regs amends regulation 51(7) PSR as follows:

“In paragraph (7), after “discharged” insert “, save that the parties may not agree that the contract may be discharged in a manner that avoids the requirements in paragraphs (5B) and (5C).””

This drafting is not consistent with the rest of the drafting of the PSR. In the Policy Note, HMT states that, *“However, as set out in the 2 October statement, the corporate opt-out in regulation 40(7) will apply to the new requirements, which means that where the customer is not an individual consumer, micro-enterprise or a charity, the parties to the framework contract may agree that the new requirements do not apply.”* However, this is not how the proposed text will be interpreted because in the PSR no obligation can be opted out of unless there is an explicit statement to that effect see the following examples:

Regulation 40(7) PSR:

“If the payment service user is not a consumer, a micro-enterprise or a charity, the parties to a contract for payment services may agree that any or all of the provisions of this Part [Part 6 – Information Requirements for Payment services] do not apply.”

Regulation 63(5) PSR:

“Where the payment service user is not a consumer, a micro-enterprise or a charity, the payment service user and the payment service provider [(i.e. customer)] may agree that—
(a) any or all of regulations 66(1) (charges), 67(3) and (4) (withdrawal of consent), 75 (evidence on authentication and execution), 77 (payer or payee's liability for unauthorised transactions), 79 (refunds for direct debits), 80 (requests for direct debit refunds), 83 (revocation of a payment order), 91 (defective execution of payer-initiated transactions), 92 (defective execution of payee-initiated transactions) and 94 (liability for charges and interest) do not apply;
(b) a different time period applies for the purposes of regulation 74(1) (notification of unauthorised or incorrectly executed payment transactions).”

There is no need for the proposed amendment. As currently drafted, the proposed amendment of regulation 51(7) PSR appears to override the opt out in regulation 40(7) PSR as regulation 51 PSR is in Part 6 of the PSR. In the very least the amendment creates confusion as to which legislative provision (regulation 51(7) PSR or regulation 40(7) PSR) applies. HMT's statement that the corporate opt out (i.e. regulation 40(7) PSR) still applies is an insufficient legal basis to take this position.

Therefore, in order to keep the corporate opt out intact, while maintaining the protections of the new regulations 51(5B) and 51 (5C) PSR, the proposed amendment to regulation 51(7) PSR should be deleted from the Draft CT Regs.

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